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In re Application of

OCT 27 2004

Robert J. Letchford

OFFICE OF PETITIONS

Application No. 10/645,454

: DECISION ON PETITION

Filed: August 22, 2003

:

Attorney Docket No.: 208-6156CT

This is a decision on the petition under 37 CFR 1.10 filed, April 16, 2004.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.10."

The instant petition was filed to correct what petitioner believed was an incorrect filing date accorded the above-cited application. Petitioner maintains that the correct filing date for the application should be August 21, 2003, not the currently accorded date of August 22, 2003. In support thereof, petitioner filed a copy of the Express Mail label EV353608754US showing a "date-in" of August 21, 2003, and a copy of the Office date-stamped postcard.

Section 1.10(a) of the Title 37 of the Code of Federal Regulations indicates that correspondence received by the Patent and Trademark Office that was delivered by Express Mail will be considered filed in the Office on the date of deposit with the United States Postal Service. Where there is a discrepancy between the date of deposit as shown on the Express Mail label and the filing date accorded the correspondence by the Office, 37 CFR 1.10(c) provides that an applicant may petition to have the Commissioner accord the correspondence a filing date as of the "date in" on Express Mail label. In accordance with 37 CFR 1.10(c), a successful petition must:

- (1) . . . be filed promptly after the person becomes aware that the Office has accorded or will accord a filing date other than the USPS deposit date;

2) [provide] the number on the Express Mail mailing label was placed on a paper(s) or fee(s) that constituted the correspondence prior to the original mailing by Express Mail; and

(3) . . . include a true copy of the Express Mail mailing label showing the date-in and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition does not satisfy the requirements of item (2) above.

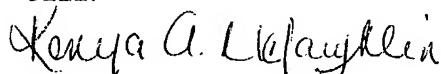
Relative to item (2), no paper was found among the application or petition papers that provided the number of the Express Mail label that constituted the correspondence prior to the original mailing. The application transmittal sheet Express Mail Certificate cites an Express Mail label number of "EV35360754US". The copy of the Express Mail label that petitioner used as evidence of the application's deposit on August 21, 2003, is Express Mail label "EV353608754US". Although an Express Mail number was cited on the sheet that contains the copy of the Office date-stamped postcard, the number is partially obscured by the postcard itself. In order for the petition to be considered grantable, petitioner must establish that the application papers were contained in Express Mail package EV353608754US by providing a copy of a paper filed with the original application that cites Express Mail number EV353608754.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 Box 1450
 Alexandria, VA 22313-1450

By facsimile: (571) 273-0025
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.



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